The court held that the bank did not have reasonable cause to believe that the debtor was insolvent or intended a preference which would render the payment recoverable as a preference under § 60 of the Bankruptcy Act. A creditor may retain preferences received within four months of the adjudication of bankruptcy if he did not have cause to believe that it was intended as a preference or with knowledge of insolvency. *McNair* v. *McIntyre,* 113 Fed. 113; *In re Maher,* 144 Fed. 503; *Johnston* v. *Anderson,* 70 Neb. 233, 97 N. W. 339. Where at the time of appointment of a receiver for a corporation it was indebted to a bank in a sum largely exceeding the amount of the corporation deposits, the bank is entitled to set-off such deposits against the corporation indebted to it. *Wheaton* v. *Daily Tel. Co.,* 124 Fed. 61. Where a general depositor becomes indebted to the bank and the debt is due, the bank may apply the deposit to the payment of the debt. *Aurora Nat. Bk.* v. *Dils,* 18 Ind. App. 319, 48 N. E. 19. There seems to be some conflict as to the general rule regarding the rights of a bank to charge a depositor's account with a debt not yet due. In the principal case the court held that the trustee could recover the amount of the note which did not mature till after bankruptcy. *Neely* v. *Grayson Co. Nat. Bk.,* 25 Tex. Civ. App. 513, 61 S. W. 559, however, holds that as against third persons and the depositor himself the bank has the right to set-off unmatured debts against deposits. In accord with *Neely* v. *Grayson* are *Kentucky Flour Co.'s Assignee* v. *Merchants Nat. Bk.,* 90 Ky. 225, 13 S. W. 910; *Armstrong* v. *Warner,* 49 Ohio St. 376, 31 N. E. 877; *Hodgin* v. *Bk.,* 125 N. C. 503, 32 S. E. 887; *Schuler* v. *Israel,* 120 U. S. 506. If a debtor be insolvent, a bank may offset as against a debt not due any sum it may be owing to the debtor unless the account which it owes has been pledged to a special purpose or is impressed with some trust. *Scott* v. *Armstrong,* 144 U. S. 479; *Schuler* v. *Israel,* 120 U. S. 506. A bank may charge a deposit whether the debt is due or not. *Sweetzer* v. *People's Bank of Minneapolis,* 69 Minn. 196; *Owen* v. *Amer. Natnl Bk.,* 36 Tex. Civ. App. 490.

CARRIERS—DUTY TO PERSON RIDING ON ENGINE.—On invitation of the conductor and engineer of the defendant's passenger train, the plaintiff's intestate rode on the engine of such train. Through a defect in the track the train was derailed, which caused the death of the intestate. *Held,* the burden of showing authority in the conductor and engineer to allow the deceased to ride on the engine is upon the plaintiff. In the absence of such proof, the presumption is that the deceased was a trespasser, and even though negligent, the defendant is not liable. *Morris* v. *Georgia R. & Banking Co.* (1908), — Ga. —, 62 S. E. 579.

Actionable negligence exists only when one negligently injures another, to whom he owes the duty of exercising care. *Burdick* v. *Cheadle,* 26 Ohio St. 393; *Pittsburgh, etc., Ry.* v. *Bingham,* 29 Ohio St. 364; *Elster* v. *Springfield,* 49 Ohio St. 82. No degree of care is owing to a mere trespasser. *Singleton* v. *Felton,* 101 Fed. 526; *Southern Ry.* v. *Shaw,* 86 Fed. 865; *Pittsburgh, etc., Ry.* v. *Redding,* 140 Ind. 101; *Planz.* v. *B. & A. R. R.,* 157 Mass. 377; *Mendehall* v. *Atch., etc., Ry.,* 66 Kan. 438; *Handley* v. *Mo. Pac. Ry.,* 61 Kan. 237. The court in the principal case says, "Whether the decedent was a passenger

* * * or a mere trespasser * * * is dependent upon whether or not the conductor or engineer was authorized to invite and permit him to ride." The master is liable for the acts of the servant done in the course of his employment, even though not authorized or if expressly forbidden. *Phila. & Reading R.* v. *Derby,* 55 U. S. 468. Where a person rides in a place apparently for the use of passengers, upon the invitation, though contrary to authority of the conductor, yet in the absence of collusion, he is not deprived of his remedy if injured through the negligence of the company. 2 WOOD, RAILWAYS, 1045; *Wilton* v. *Middlesex R. R.,* 107 Mass. 108; *Washburn* v. *Nashville, etc., R. R.,* 3 Head. (Tenn.) 638; *Jacobus* v. *St. Paul & C. R. R.,* 20 Minn. 125; *Secord* v. *St. Paul, etc., R.,* 18 Fed. 221. The conductor is charged with the administration of the rules of the company while running the train, and his assent to a person's being on the train is the assent of the company. *Creed* v. *Penna. R.,* 86 Pa. St. 139. But when the act is obviously not within the scope of his employment (*G. C. & S. F. Ry.* v. *Campbell,* 76 Tex. 174; *Powers* v. *B. & M. R.,* 153 Mass. 188), or if the person so riding had knowledge of a rule forbidding it (*Penna. Co.* v. *Coyer, Admx.,* 163 Ind. 631), it is held that there can be no recovery. To permit a person to ride on the engine cannot be said to be obviously or apparently within the scope of the authority of either the conductor or engineer. *B. & O., etc., Ry.* v. *Cox, Admx.,* 66 Ohio St. 276; *Eaton* v. *Delaware, etc., R.,* 57 N. Y. 382; *Va. Mid. Railroad Co.* v. *Roach,* 83 Va. 375; *Files* v. *B. & A. R.,* 149 Mass. 204. Hence not being within either the actual or apparent authority, but directly contrary thereto, a person accepting passage upon an engine is a trespasser, to whom no duty to exercise care is owing. *International, etc., R. Co.* v. *Cooper,* 88 Tex. 607; *Eaton* v. *Delaware, etc., R. R.,* supra; *Va. Mid. Railroad Co.* v. *Roach,* supra; *Radley* v. *Columbia R.,* 44 Ore. 332; *Springer* v. *Mo. Pac. R.,* 96 Mo. 299; *Chi., etc., R.* v. *Michie,* 83 Ill. 427; *Woolsey* v. *Chicago, etc., R. Co.,* 39 Neb. 798; *Files* v. *B. & A. R.,* supra; *McVeety* v. *St. Paul, etc., R.,* 45 Minn. 268; contra, *Creed* v. *Penna. R. R.,* supra; *Washburn* v. *Nashville, etc.,* supra.

CARRIERS—THROUGH CONTRACT—LIABILITY OF CONNECTING CARRIERS.—Action against terminal carrier for value of bale of cotton lost. The bill of lading disclosed a receipt for the cotton marked to a destination beyond the initial carrier's own line, to be carried for an integral sum. It also contained a clause that no carrier should be liable, except for loss or damage occurring on its own line. § 2298 of the Georgia Code, 1895, provides that connecting carriers shall be liable for loss or damage only until delivery to the connecting carrier, the last one to receive the goods as "in good order" being responsible to the consignee. *Held,* to be a through contract of carriage, and that the stipulation limiting liability was not binding because not assented to; also that the presumption of liability raised by § 2298 was rebutted by the undisputed evidence showing that the cotton was never put upon the car, and hence no action would lie against the terminal carrier. *Atlantic Coast Line R. Co.* v. *Henderson & Powell* (1908), — Ga. —, 61 S. E. 1111.